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Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:

GRAIL SEMICONDUCTOR, a California
corporation,

Debtor.

Sheri L. Carello, in her capacity as Trustee for the
Bankruptcy Estate of Grail Semiconductor, a
California corporation,

Plaintiff,

vs.

DONALD STERN, BILLIONAIRE HOPE
INTERNATIONAL, LTD., MOM OS, LLC,
FRANK BAUDER, THE HONGKONG AND
SHANGHAI BANKING CORPORATION
LTD.,

Defendants.

Case No.: 15-29890-D-7
Chapter 7

Adversary No. 16-02088
DNL-2

Date: June 15, 2016
Time: 10:00 a.m.
Place: 501 I Street, 6th Floor
Courtroom 34
Sacramento, CA 95814

**DECLARATION OF SHERI L. CARELLO IN SUPPORT OF APPLICATION FOR
RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF
ATTACHMENT**

I, Sheri L. Carello, declare that:

1. I am the duly appointed Chapter 7 trustee for the above-captioned bankruptcy estate commenced by GRAIL SEMICONDUCTOR, a California corporation ("Debtor"). If called as a witness, I could and would competently testify to the matters set forth in this declaration from my own personal knowledge, unless otherwise stated.

2. By the underlying ex parte application, I seek a right to attach order and writ of attachment that attaches to DONALD STERN'S ("Stern") and BILLIONAIRE HOPE INTERNATIONAL, LTD.'S ("BHI") account in the amount of \$2.75 million with THE HONGKONG AND SHANGHAI BANKING CORPORATION LTD. ("HSBC").

3. I understand that in January 2000, the Debtor was incorporated by cousins Stern and Robert Stern as a startup company in order to market new technology in memory chip design invented by Stern.

4. I also understand that in an effort to produce the technology, the Debtor and Stern met with two representatives of Mitsubishi Electric & Electronics USA, Inc. ("Mitsubishi") along with representatives of Global Alliance and Asia Star Ventures. I am aware that during the meeting, Stern provided a presentation, the information of which was protected by a nondisclosure agreement.

5. I understand that the Debtor's and Stern's efforts did not culminate in any outside investment or product development. Through my investigation, I have learned that a dispute arose between the Debtor and Mitsubishi after Stern learned of a joint venture, involving the parent company of Mitsubishi, that he believed was incorporating the Debtor's technology in violation of the nondisclosure agreement. I also learned that the dispute resulted in the Debtor suing Mitsubishi commencing *Grail Semiconductor, Inc. v. Mitsubishi Electric & Electronics USA, Inc.*, Case No. 1-07-CV-098590 (Sup. Ct. Cal., Santa Clara Cty.). A copy of the Court of Appeals decision identifying the facts surrounding the State Court Case is filed herewith as **Exhibit D**.

6. I understand that after the Debtor obtained a jury verdict that was set aside by the trial

1 court and the trial court's decision affirmed on appeal, the Debtor and Mitsubishi participated in a
2 mediation that occurred on the eve of retrial. I also understand that during the mediation, the Debtor
3 and Mitsubishi entered into a settlement agreement that provided a \$55 million payment to the
4 Debtor ("Settlement Funds").

5 7. I have learned that without board approval, while the Debtor was insolvent, and
6 at Stern's direction, approximately \$2.75 million ("Transferred Funds") was posted to an account
7 held by Stern and BHI, a sham company of Stern organized under the laws of the British Virgin
8 Islands. A copy of the October 14, 2015 board minutes evidencing that the transfer was without
9 board approval is filed herewith as **Exhibit A**. In addition, copies of letters dated October 20, 2015
10 and October 29, 2015 sent on behalf of the Debtor requesting the funds be returned are filed
11 herewith as **Exhibit B** and **Exhibit C**, respectively.

12 8. The Transferred Funds were monies taken directly from the Settlement Funds and
13 deposited into an account held with HSBC. Portions of the Transferred Funds were transferred by
14 Stern to Frank Bauder ("Bauder") in the amount of \$250,000 and MOM OS LLC ("MOM OS") in
15 the amount of \$400,000. The transfers were discovered after HSBC notified Brad Woods ("Woods")
16 of the transfers and that a large portion of the Transferred Fund were being transferred out of the
17 account. A copy of the correspondence between HSBC and Woods evidencing the transfers is filed
18 herewith as **Exhibit E**.

19 9. On May 4, 2016, I commenced the above-captioned adversary proceeding against,
20 among others, BHI and Stern alleging causes of action that included requests for avoidance and
21 recovery of fraudulent transfers pursuant to California Civil Code Sections 3439.04 & 3439.05 and
22 11 U.S.C. Sections 544 and 550.

23 10. In conjunction with this application, I anticipate filing DNL-1, my ex parte
24 application for a temporary protective order. I also anticipate filing DNL-3 in the parent bankruptcy
25 case, my application to employ Mayer Brown JSM ("Special Counsel") as the estate's Hong Kong

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1 special counsel to assist with recovering the Transferred Funds and enforcing any order issued by
2 the Court.

3 I declare under penalty of perjury under the laws of the State of California, that the
4 foregoing is true and correct.

5 Executed this 12 day of May, 2016 at Sacramento, California.

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7 SHERI L. CARELLO